

Remarks/Arguments

Claims 1-10, 14-20, and 26-30 are pending in the application. Claims 11-13 and 21-25 are cancelled. Claims 1-5, 7, 9-12, 14-16, 18, 22-28, and 30 have been rejected under 35 U.S.C. 102(b) in view of Newton, Cuniberti, Hara, and Remensperger and under 35 U.S.C. 102(a) in view of Sanchez de Leon Rodriguez Roda. Claims 6, 8, 13, 16, 19, and 20 have been rejected under 35 U.S.C. 103(a) in view of Newton, Cuniberti, Hara, Remensperger, and Sanchez de Leon Rodriguez Roda. Claims 17 and 21 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Sanchez de Leon Rodriguez Roda in view of Goranson. Claim 29 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Newton, Cuniberti, Hara, Remensperger, or Sanchez de Leon Rodriguez Roda in view of Nordstrom. Claims 8, 19, and 20 have been rejected under 35 U.S.C. 112 as not being supported by the specification. The drawings have been objected to under 37 CFR 1.83(a) as not adequately showing the timing means of claim 8 or the axial spacing apparatus of claims 19 and 20.

Claim 8 has been amended to recite a motor assembly for controlling the speed of the conveyor belt of a transport surface. The specification describes such a motor assembly 45 on page 10, starting on line 22 extending to page 11, line 8, and is shown in Fig. 2.

Claim 19 recites an axial spacing apparatus disposed between the lateral shift mechanism and the downstream apparatus. Claim 20 recites an axial spacing apparatus disposed between the upstream apparatus and the transport surface linked to the lateral shift mechanism. The axial spacing apparatus is discussed in the specification starting on page 8, line 22, and extending to page 9, lines 1-4, where it is described that the axial spacing apparatus 61 may be located adjacent to the lateral conveyance apparatus 21. The axial spacing apparatus includes a transport surface that travels at a speed that may be adjusted or varied relative to adjacent transport surfaces to vary the axial spacing of rows of foodstuff. The axial spacing apparatus is further discussed starting on page 16, line 1 extending to page 17,

Page 7 - RESPONSE TO OFFICE ACTION DATED SEPTEMBER 10, 2004
Serial No. 10/659,635

line 17, where it is discussed that the axial spacing apparatus may be a continuous loop conveyor system that operates at selectable speed and controlled by a motor assembly. The axial spacing apparatus 61 is shown in Fig. 8A.

Applicants respectfully request that, in view of the above discussion, the Examiner withdraw the rejection of claims 8, 19, and 20 under 35 U.S.C. 112, as well as the objection to the drawings under 37 CFR 1.83(a).

The present invention is directed to a system that provides a more optimal arrangement of foodstuff on a conveyor to provide a higher throughput for a processing device, such as an oven. For example, the system of the present invention may receive a set of foodstuff, such as hamburger patties, in which the patties are arranged in rows of four, as shown in Fig. 3. However, the system of the present invention is not limited to handling a specific number of items per row. The system of the present invention is adapted to handle items arranged in rows that may contain a variety of number of items. For example, the system may process a first batch of foodstuff items arranged in rows of four. The system may also process a second batch of foodstuff items arranged in rows of five, six, or more items. The present invention is further adapted to vary the spacing between rows of foodstuff by providing an axial spacing apparatus as discussed above.

Independent claims 1, 10, 14, and 26 have been amended to generally recite that the system is adapted to process rows of foodstuff items, wherein the rows may contain various numbers of foodstuff items. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). None of the prior art discloses such a system. The prior art devices are limited to handling rows of items that contain a set number of items. For example, the device of Newton includes a conveyor that has lugs 13 for each item to force each item onto an inclined vibrating

chute 12. The system of Newton is limited to processing only the number of items per row as there are lugs 13. Cuniberti is limited to transferring a single item F at a time from one conveyor to another. Hara is limited to transferring only a number of items determined by the structure of the feeding plate 5. Remensperger can only process one item at a time with each item moving between transmitters 58, 60 and receivers 62, 64. Sanchez de Leon Rodriguez Roda is limited to processing items the number of which is determined by the number of belts 1, 1'. Since none of the prior art disclose a system that can process foodstuff items arranged in rows, wherein each row may contain various numbers of foodstuff items, Applicant respectfully submits that pending claims 1-5, 7, 9, 10, 14-16, 18, 26-28, and 30 are not anticipated by Newton, Cuniberti, Hara, and Remensperger, or Sanchez de Leon Rodriguez Roda.

The above arguments are equally applicable to pending claims 6, 8, 16, 19, and 20. It is not clear how the Examiner applies the prior art to this set of claims. The Examiner states that the sensors in the prior art are functionally equivalent to the claimed sensors, that the timing means is not critical and that prior art systems are functionally equivalent, and that the axial spacing apparatus adds no value over the functionally equivalent systems in the prior art. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). It is not clear how the Examiner suggests modifying the prior art to arrive at the claimed structure and method. In any event, since none of Newton, Cuniberti, Hara, Remensperger, and Sanchez de Leon Rodriguez Roda

disclose a system adapted to process rows of foodstuff items, wherein the rows may contain various numbers of foodstuff items, Applicant submits that pending claims 6, 8, 16, 19, and 20 are not obvious in view of any of the cited references.

The above arguments are equally applicable to pending claims 17 and 29. However, the addition of either Goranson or Nordstrom do not make up for the deficiencies of Newton, Cuniberti, Hara, Remensperger, and Sanchez de Leon Rodriguez Roda. It is not clear how the Examiner suggests modifying Sanchez de Leon Rodriguez Roda in view of Goranson. Also, the proposed combination of Nordstrom with any of Newton, Cuniberti, Hara, Remensperger, and Sanchez de Leon Rodriguez Roda would not result in the claims as now presented. Therefore, Applicant respectfully submits that claims 17 and 29 are allowable over the prior art.

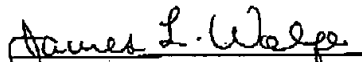
In view of the foregoing reasons for distinguishing over the cited references, Applicant has not raised other possible grounds for traversing the rejections, and therefore nothing herein should be deemed as acquiescence in any rejection or waiver of arguments not expressed herein.

CONCLUSION

Applicant submits that in view of the foregoing remarks and/or amendments, the application is in condition for allowance, and favorable action is respectfully requested. The Commissioner is hereby authorized to charge any fees, including extension fees, which may be required, or credit any overpayments, to Deposit Account No. 50-1001.

Respectfully submitted,

Date: December 10, 2004


James L. Wolfe, Esq.
Registration No. 33,623
P. O. Box 2200
Hillsboro, Oregon 97123
Telephone: (503) 844-9009
Facsimile: (503) 296-2172
email: mail@ganzlaw.com